December 21, 1933
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Volume 9, Number 4
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The Los Angeles Bar Association BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California

The
Los Angeles Bar Association
Presents the
FIFTH ANNUAL
Christmas Jinx

☆

Saturday Evening, December 16, 1933

Sala de Oro, Biltmore Hotel

Informal - Dinner at 6:30 p. m. - $1.85 per plate

☆

GUESTS ARE WELCOME

Return Reservation Cards by Friday Noon, December 15th

Printed by PARKER, STONE & BAIRD COMPANY
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Work of the Board of Trustees

To Be Communicated to Members Through The Bulletin

Beginning with this issue THE BULLETIN will print each month a summary of the proceedings of the Board of Trustees on matters of interest to members. By this means the members will be kept informed of the important work being done by the Board in their interest, as well as in the interest of the Bar of the entire country, and there will be developed a larger degree of cooperation in this work.

AFFILIATED ASSOCIATIONS

SOME TIME AGO the Board appointed a Special Committee to make a study of the structure of affiliated bar associations of the county in order to determine how the relations of such associations and the Los Angeles Bar Association may be improved.

The Committee has made its report which contains recommendations of interest and importance to members of both local and affiliated associations.

DUES.

On the subject of dues of non-resident and affiliated members, which is $5.00 a year, the Committee remarks that under our by-laws even though a group of lawyers claim to be an association "when in reality they are not," the members of such a group would have the privilege of the $5.00 annual dues as non-resident members; in other words, there is no distinction as to dues between the two classifications. The Committee believes the collection of dues of affiliated members by affiliated associations, is impractical and would cause difficulty to the affiliated associations, because of the trouble of seeing to it that both their local dues and the dues to this association are paid, and because it might appear to their members that the entire amount goes to the local affiliated association making the collection. It is recommended that the secretaries of the local associations collect only the local dues and that this association continue to collect dues of affiliated members.

The largest problem of the Association, the Committee concludes in this connection, arises from the inclusion in both the affiliated and non-membership, those having offices in Los Angeles or who are employed in Los Angeles.

JUDGES.

The Committee believes that judges of the Superior Court of this county and those who maintain offices or have their places of employment in Los Angeles, should pay the regular $10.00 annual dues of active members; that the members of these groups are effectively benefited by the many activities of this Association dealing with matters local to Los Angeles, and that the value of the Association to judges or the Superior Court is "too patent to call for further expression here." It is recommended that the by-laws be changed in several particulars.

It was decided that the matter of making the changes recommended by the Committee be deferred for the present and that the subject be taken up in the early part of 1934.

The Committee which made a survey of the situation and rendered the report was composed of W. Blair Gibbons, of the Santa Monica Bar Association; Raymond G. Thompson of the Pasadena Bar Association, and Fred Miller of the Long Beach Bar Association.

Los Angeles Bar Association Bulletin

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Official Publication of the Los Angeles Bar Association. Published the third Thursday of each month. Entered as second class matter August 8, 1930, at the Postoffice at Los Angeles, California, under the Act of March 3, 1879.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

Of Los Angeles Bar Association Bulletin, published monthly, at Los Angeles, State of California, for October 1, 1933.

State of California } ss.
County of Los Angeles }

Before me, a notary public in and for the State and county aforesaid, personally appeared James M. Boyd, who, having been duly sworn according to law, deposes and says that he is the business manager of the Los Angeles Bar Association Bulletin and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher—Los Angeles Bar Association, 1124 Rowan Bldg., Los Angeles, Calif.

Editor—Birney Donnell, 511 Citizens Nat. Bk. Bldg., Los Angeles, Calif.

Managing Editor—None.

Business Manager—James M. Boyd, 241 East Fourth street.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)

The Los Angeles Bar Association, an unincorporated association, composed of members of the Los Angeles City and County Bar. Address: 1124 Rowan Building, Los Angeles, Calif.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.)

None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a *bona fide* owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the 12 months preceding the date shown above is not required. (This information is required from daily publications only.)

J. M. BOYD.

Sworn to and subscribed before me this 13th day of October, 1933.

(SEAL) FLORENCE A. PRIEST,
Notary Public.

(My commission expires August 30, 1937.)

GRIEVANCE COMMITTEE.

The Board of Trustees again considered the question of creating a Grievance Committee. It was finally decided that a committee be appointed to confer with the Board of Governors of the State Bar of California, which should report back with its recommendations. The President appointed Joe Crider, Jr., Clyde C. Shoemaker and Alfred Barstow for the purpose.

HISTORICAL PAGEANT CONTEMPLATED

An historical pageant by members of the Bar Association is being considered by the Trustees. A reproduction of the Constitutional Convention of 1787 is to be the subject, if the plan is adopted. The president will appoint a committee to consider the matter of financing and the availability of a proper place for the big show. The Kansas City Bar Association presented an elaborate reproduction of the 1787 Convention last year, with striking success. The public responded handsomely to the undertaking and the Association earned both renown and funds. We shall hear more of the local plan in the near future. Can you fancy some of our eminent judges and counsellors in the fancy costumes of the Revolutionary period?

MEMBERSHIP CAMPAIGN.

A campaign for members is to be pushed. Cards bearing the names of prospective members have been prepared, and shortly after the holidays an effort will be made to increase the rolls of the Association.

Why not follow the plan of the Boston Bar Association and *invite* the men and women lawyers of the city and county to come in and take a real part in the work of the organized bar? It proved successful in Boston and it might succeed here.

CONSTITUTIONAL AMENDMENT NO. 98.

Whether or not Constitutional Amendment No. 98 shall be endorsed by the Association was considered at recent meetings of the Trustees. It was decided that, in view of the fact the January meeting of members will be in the hands of the Junior Barristers, the subject should be presented and discussed at the March meeting. This is the amendment sponsored by the State Bar and provides that the Governor in making judicial appointments in this county is limited to a list of not more than three nor less than two names submitted to him by the Board, consisting of the Chief Justice of the Supreme Court, the Presiding Justice of the District Court of Appeal, Division One, and the Senator from the District.

Judges Present Successful Program

THE NOVEMBER MEETING of the Bar Association at the University Club, attended by 400 members, was entertained by the most interesting program that has been presented in a long, long time. Other than the business of selecting a nominating committee, the meeting was entirely in the hands of the judges, who arranged the program and carried it out in commendable style.

Judge Hartley Shaw, as presiding judge of the Superior Court, took over the gavel from President Larrabee, and introduced Judge Frank C. Collier, as chairman of the evening. Judge Collier was an ideal chairman and carried out the program in the same business-like manner he opens court and conducts trials.

Dr. Frederic Wollner, of U. C. L. A., was the speaker of the evening. His inimitable wit and frank comments on things political and otherwise made a great hit with the members. Not in years has the Bar Association enjoyed a musical program equal to that arranged by the judges. Especially popular were the numbers given by the Chanters from B. P. O. E. 99, Los Angeles. THE BULLETIN sincerely hopes that the judges will take charge of the meetings in the future.

The committee of judges that arranged the program was composed of Judges Marshall F. McComb, Edward T. Bishop, Joseph P. Sproul, and William J. Palmer.

Glimpses of the Christmas Jinx

By Gus Mack of the Los Angeles Bar

PREPARATIONS are complete for the staging of the fifth annual Christmas Jinx of the Los Angeles Bar Association this coming Saturday evening, December 16th, in the Sala de Oro of the Biltmore Hotel. Dinner commences at 6:30 at the total price of $1.85 per plate, and the Jinx will follow immediately after dinner. Reservations for the repast should be telephoned or sent to the office of the Association by noon of Friday, the 15th. Guests of members are welcome, and the Jinx is one occasion that always attracts a goodly turnout of the fairer sex.

According to Rex Hardy, Chairman of the Jinx Committee, the theme of the show will remain entirely unrevealed right up to curtain-time, at which time it will descend with dramatic display upon the audience. The title of the production at the present time is a mystery due to lack of proper superlatives. It is definitely known, however, that the Jinx will be a musical production, somewhat in the nature of a musical comedy, entirely farcical and in a spirit of jest and fun—and that is the spirit in which the audience is expected to attend.

This is to be a production featuring numbers and initials—there will be duets, quartets, sextettes, solos—and you'll get a laugh when you find out the meaning of the theme initials "J. J. J."

Rex Hardy, Chairman of the Jinx Committee, is directing the show and has written the manuscript. He has on his committee Erwin W. Widney, vice-chairman; William M. Rains, secretary; Judge Clement L. Shinn,, Judge Chas. S. Burnell, Judge Leon R. Yankwich, Judge LeRoy Dawson, George Breslin, C. E. McDowell, L. R. Martineau, Jr., Florence M. Bischoff, Gretchen Wellman, Everett W. Mattoon, Henry Herzbrun, J. Deacon Taggart, Joe Crider, Jr., Charles E. Beardsley, Lowell Matthay, H. Sidney Laughlin, Jack W. Hardy, Kenneth N. Chantry, Carol Wynn, and Gus Mack. This committee has been working consistently for the past two months and mean it when they say "you'll be glad you came."

Thanks From the Judges

DEPARTMENT OF PRESIDING JUDGE
THE SUPERIOR COURT
LOS ANGELES, CALIFORNIA

November 13, 1933.

Mr. Lawrence L. Larrabee,
President, Los Angeles Bar Association,
1124 Rowan Building,
Los Angeles, California.

Dear Mr. Larrabee:

Speaking for the Judges of the Superior Court of this County, and by their direction, I desire to express our thanks to the Los Angeles Bar Association for all that it has done and is doing to promote the best interests of the Superior Court and other Courts.

The members of the Bar know better than anyone else, the work which the Courts are doing and the measure of success attained by the Judges in their efforts to administer exact and impartial justice. Your approval, as indicated by the support you have accorded the Court in matters affecting their welfare, is therefore greatly appreciated by us.

With best regards, I am

Yours sincerely,

HARTLEY SHAW,
Presiding Judge.

Recent Changes in the Probate Code

By Florence M. Bischoff of the Los Angeles Bar

THE 1933 LEGISLATURE made comparatively few changes in the Probate Code. Many of the amendments do little more than clarify the sections which they amend. Others make changes to meet the exigencies of present conditions.

ADMINISTRATION OF ESTATES.

Section 440, (Contents of Petition: Article on Application for Letters) has been amended to require that the post-office addresses of the heirs of the decedent, so far as known to the applicant, must be given in the petition for letters of administration. Heretofore petitions frequently gave the residences of the heirs simply as "Los Angeles, Cal."; "New York, N. Y."; "Chicago, Ill.", and the notices sent out addressed as given in the petition were returned.

Section 702 (Affidavit of Publication of Notice to Creditors), provides that the affidavit showing publication of notice to creditors must be filed within thirty days after the completion of the publication, instead of within thirty days after the first publication.

The amendment to Section 715 (Vacancy in the Administration), makes clear the provision that the time during which there is a vacancy in the administration is not included in any limitation prescribed for bringing suit upon a rejected claim.

Section 920.5 (Trust Company Executor; Interest on Deposits of Estate), is amended to correct an obvious omission. A trust company as an administrator (as well as executor, special administrator or administrator with the will annexed) shall be chargeable with interest on the money of the estate deposited in any department of the corporation of which it is a part.

BONDS.

There are four new sections relating to bonds, two relating to bonds of executors or administrators' bonds, one to guardians' bonds, and one to trustees' bonds. Section 541.5 (Executor, etc. to be allowed cost of bond), provides that every executor or administrator furnishing a surety bond shall be allowed the cost of such bond for every year it remains in force; Section 930.5 (Executor, etc. to be allowed cost of bond), however, is contradictory in that it provides that the executor or administrator shall be allowed the cost of his bond not exceeding one-half of one per cent. of the amount of the bond for each year it remains in force; Section 1127 (Trustee Must Give Bond, Cost Allowed), makes provision for the allowance of the cost of a trustee's bond as for an executor's under Sec. 541.5; Section 1556.5 (Guardian to be allowed cost of bond) makes the same provision for the allowance of the cost of a guardian's bond.

APPRAISERS.

Two of the sections referring to the appraisement of estates have been changed.

Section 605 (Appointment of Appraisers) now provides that the court or judge must appoint one of the inheritance tax appraisers to make the appraisement, or upon the request of the executor or administrator or of any person interested in the estate the court in its discretion may appoint three persons, one of whom must be an inheritance tax appraiser.

Section 609 (Compensation of Appraisers), changes the compensation of appraisers, which is now based upon the total amount of the inventory and appraisement as follows:

> For the first $5,000 (or fraction thereof), $5; for the next $495,000, 1/10th of 1% thereof; over $500,000, 1/20th of 1%.

LIENS.

Six sections were amended by including the words "deed of trust" in the enumeration of instruments in their provisions.

Section 463 (Powers of Special Administrator), authorizes the special administrator to execute a deed of trust as well as to borrow money, lease or mortgage real property.

Section 706 (Claim Founded on Written Instrument; Secured by Lien), now includes deeds of trust among the recorded liens, a copy of which need not be attached to a claim if the book and page of the record is recited therein.

The words "deeds of trust" are inserted among the liens enumerated in Section 736 (Devise of Land Subject to Lien); in Section 789 (Real Property Sold Subject to

a Lien); in Section 790 (Method of Discharging Lien), and in Section 791 (Lien Holder as Purchaser).

REAL PROPERTY.

Section 587 (Executor May Dedicate Easement for Streets, Etc.), which provided for the dedication of easement for streets, etc. without compensation, is amended to provide for the dedication either with or without compensation.

Section 780 (Notice and Publication of Sale), which provides for the posting of notice of sale of property of a value not exceeding five hundred dollars, is amended to require such posting to be had in the county in which some portion of the land lies.

Section 782 (Private Sale) is amended to include a posting of the notice of the sale of real property at private sale as well as the publication of such notice for the computation of the time when such sale may be made.

Section 844 (When Proceedings Are Not Necessary) (Article on Leasing), now provides that an executor or administrator may lease without an order of court, for a term not to exceed one year, instead of for a term not extending beyond the time for filing or presenting claims.

COMPROMISES.

Section 578 (Compounding Debts; Compromises), which heretofore provided that reasonable notice of the application for approval of a compromise of a debt due the estate should be given by the administrator or executor to all persons who have filed appearances, now provides that notice under Section 1200 be given.

Sections 718.5 and 718.6 are new sections which provide procedure for avoiding foreclosures or sales under deeds of trust, both in behalf of and against estates. Section 718.5 (Compromise of Claims Against Estate) authorizes the transfer of specific assets (including real estate) to satisfy a claim against an estate upon a verified petition heard after notice given under Section 1200. This section makes possible the giving of a deed to a lienholder in lieu of foreclosure or sale. Section 718.6 (Acceptance of Deed Conveying Property Subject to Mortgage, etc. In Lieu of Mortgage or Sale under Deed of Trust) authorizes the executor or administrator to accept a deed of property which is subject to a mortgage or deed of trust belonging to the estate in lieu of foreclosure, upon a petition heard after notice given under Section 1200.

ACCOUNTS AND DISTRIBUTION.

Section 932 (Accounts of Deceased or Incompetent Executor), which provides for the rendering of an account of a deceased executor or administrator by his personal representative, is amended to provide that the guardian of an executor or administrator who has become incompetent shall render an account.

Section 1010 (Ratable Distribution), which provided for ratable distribution after the term for filing or presenting claims has expired and all claims paid or sufficiently secured by mortgage, now provides that such ratable distribution may be made if all *uncontested* claims have been paid or are sufficiently secured by mortgage or otherwise.

Section 1020 (Procedure) (Article on Final Distribution) as amended provides that any person interested in the estate or any co-executor or co-administrator may resist the application for final distribution. It omits the requirement for a supplemental account, which requirement is now set forth in a new section, Section 1020.5 (Statement of Receipts and Disbursements Since Last Account; Estimate of Expenses of Closing Estate).

A new section, Section 1026 (Aliens Inheriting Must Claim Within Five Years), provides for the escheating of property if a non-resident alien entitled to succeed to it does not appear and demand the property within five years from the time of succession.

Section 1027 (Distribution Must be Applied for When Final Account Filed. Duty of Court to Distribute Estate) is a new section which provides for distribution to the State of California of estates or portions thereof not distributed to known heirs, and for the application within five years to the Superior Court of Sacramento County by the persons making claim therefor.

NOTICE.

Section 1200 is amended to conform to the provisions in Sections 578, 718.5, 718.6 and 1557, and to make certain the notice required for petitions under Sections 641 and 642 for setting aside to widows and minor children estates under $2500.

Section 1201 (Publication in Case of Sales of Mines, etc.) is amended to provide that in all cases where publication of notice is required the first publication must be at least ten days before the hearing.

SUMMARY PROBATE PROCEEDINGS.

Section 630 (Summary Probate Proceedings), which enumerates the property which the heirs of a decedent who leaves no real property in the State or personal property in excess of one thousand dollars may receive without the necessity of administration, has been amended to include "disability benefits."

APPEALS.

A new section, Section 1241 (When Order Appointing Executor, etc. Reversed, Lawful Acts Valid) provides that when an order appointing an executor or administrator is reversed on appeal for error, all lawful acts performed by the executor or administrator as such are valid.

Another new section, 1242 (Judgment Roll, What Papers to Constitute) is an important change. (See "THE NEW JUDGMENT ROLL IN PROBATE" by F. H. Dam; *The State Bar Journal*, October, 1933, page 234.)

TRUSTS.

The amendment to Section 1120 (Accounting by Trustee; Notice of Rendering Accounts) makes clear the requirement that the *trustee* shall cause notice of the hearing of accounts and reports, and petitions for instructions to be mailed to the beneficiaries at their last known addresses whether they have requested special notice or not.

Section 1125 (Appointment to Fill Vacancy) is amended by omitting the requirement of a trustee's bond, but the requirement is set forth in a new section, Section 1127 (Trustee Must Give Bond; Cost Allowed).

Section 1126 (Vacancy After Distribution) is amended to provide for notice of the hearing of a petition for the appointment of a trustee to fill a vacancy after distribution to be mailed by the petitioner to the beneficiaries at their last known addresses, whether they have required special notice or not.

GUARDIANSHIPS.

Section 1501 (Wage Claims Not Exceeding $200 each for Work Done Within Ninety Days Preferred) is a new section which makes provision for the prompt payment by a guardian of wage claims of not exceeding $200.00 for work done or services rendered for the ward within ninety days prior to the filing of the petition for appointment of guardian, such claim having priority over the general debts of the ward, but not over the reasonable needs of the ward and the wife and children of the ward.

Section 1515 (Guardian May Dedicate Easement for Streets, etc.), which provides for the dedication of easement for streets, etc., has been amended so that such dedication may be made *with* consideration as well as without consideration.

Section 1530 (Purposes of Sale etc.), has been amended so that the guardian may exchange any real or personal property of the ward when it appears to be advantageous to the estate.

A new section, Section 1540 (Exchange of Properties of Ward), also makes provision for the exchange of property of the ward when such exchange is advantageous to the ward and such members of his family as he is legally bound to support. The section provides further that the provisions of the Probate Code governing sales, etc., by administrators shall apply to and govern exchanges by guardians.

Section 1531 (Conversion of Property for Purposes of Investment) has been amended by providing that the order confirming a sale or authorizing the sale of stocks and bonds, in addition to the specification of the particular disposition to be made of the proceeds may direct the deposit of the proceeds in a savings account.

Section 1537 (Conveyance to Comply With Contract), which provides for the authorization by the court for the guardian to convey property which an incompetent ward was bound by contract executed by him while competent or executed by his predecessor in interest to convey, is now amended so that the guardian of a minor ward may be authorized to convey property when the ward has succeeded to the interest of a person bound by such a contract.

Section 1557 (Order Authorizing Investment), now prescribes notice of the hearing of a petition to invest funds of a ward to be given under the provisions of Section 1200, and for the mailing of notice to the guardian and persons requesting special notice.

State Bar Unlawful Practice Suits

THE NOVEMBER issue of the BULLETIN announced the filing of a suit against the Security-First National Bank of Los Angeles in the name of The State Bar, charging the defendant with the practice of law. The status of the case at this writing is, that a demurrer and motion to strike are pending and will be heard on December 12th. The article on this suit appearing in the November BULLETIN inadvertently omitted the name of the attorneys appearing for The State Bar. The complaint was signed by Joseph L. Lewinson and Philbrick McCoy, as attorneys for The State Bar.

NEW ACTION FILED.

On December 5th a second action was filed by The State Bar in this county against the Bank of America National Trust and Savings Association, the same attorneys representing the plaintiff. The complaint is substantially the same as that against the Security-First National Bank, except there is included a paragraph with reference to the foreclosure of mortgage which alleges that the defendant bank:

"Has appeared and now appears in the Superior Courts of the State of California, in and for each of the several counties in said state, and in particular in and for the County of Los Angeles, as plaintiff is informed and believes and therefore alleges, by agents who are active members of The State Bar of California, in its employ at fixed and stated salaries, either with or without the assistance of other active members of The State Bar of California not so employed by defendant, in proceedings for the foreclosure of mortgages of real property wherein the defendant has been and now is the mortgagee, and in actions to quiet title to real property, the title to which is claimed by defendant, and defendant has obtained and obtains allowance of attorney fees by such courts, and has applied and applies such fees or a substantial portion thereof to its own uses and purposes; and in that behalf plaintiff is further informed and believes and therefore alleges that defendant by its said employees, has prepared and prepares all pleadings necessary for the filing of such actions, including the complaints, summons and notices of *lis pendens*, and files the same, the said employees being therein named and later appearing as attorneys of record for the defendant as the party plaintiff in such actions, and defendant, through such employees thereafter performs all services in said court with respect to such proceedings, throughout its various states, and in conformity to the adopted rules of procedure therein including the preparation of the orders or decrees of said court foreclosing such mortgages and allowing attorneys' fees and directing the sale of such real properties, or quieting the title to such real properties, as are customary and usual in such proceedings, until such time as such actions have been set for trial before said court on default of the defendant therein or otherwise, as the case may be at which time defendant, acting through such employees, prepares and signs substitutions of attorneys for the defendant as party plaintiff in such actions, by which substitutions other active members of The State Bar of California, not regularly employed and paid by defendant are substituted as attorneys for defendant; and the attorneys' fees allowed in said actions have been and are allowed to attorneys so substituted, who have been and are paid nominal sums by defendant."

Welcome, New Members

Following are the latest additions to the membership roll:

Angelillo, Paul
Bennett, John Kerns
Bolton, Ivan A.
Boyd, James Macnab
Brice, James P.
Facto, Leo R.
Ford, Robert E.
Fleming, John Amos
Holt, Frank L.
McCanles, Wendell W.
Neuman, Roberdeau F.
Phelan, Mervyn W.
Roberts, Glenn S.
Robinson, Walter H.
Smith, Lloyd Melvin.

Origin, Effect and Use of Section 2055 C.C.P.

By Henry M. Willis, Judge of the Superior Court

I. Origin.

PRIOR TO THE ENACTMENT of Section 2055 of the Code of Civil Procedure, there had been in practice in the trial of cases in California the expedient of calling an adverse party as a witness. This practice was not freely indulged in but usually was *ex necessitate,* to establish some material fact which was peculiarly within the adverse party's knowledge, such as age, relationship, marriage status, ownership, identity of person, and the like. Calling such adverse party was accompanied by danger as it involved a vouching for the truth of the party's testimony, and while such testimony might be contradicted by other evidence, and the party might be shown to have made at other times statements inconsistent with his present testimony, yet the party producing such adverse party as a witness was not allowed to impeach his credit by evidence of bad character, nor by evidence of previous conviction of a felony. (Secs. 2049 and 2051 C. C. P.) Nor could the party calling such adverse party as a witness ask him leading questions which suggested the answer desired, except in the sound discretion of the court. (Secs. 2045 and 2046 C. C. P.) Under the old practice, however, courts were quite liberal in allowing leading questions, and the adverse party was usually cross-examined quite freely under leave of court.

FIRST MENTIONED.

Mr. Justice Onley, in *Estate of Carson,* 184 Cal. 437, in the first mention of the new section 2055 by the Supreme Court, recognized the former practice when he said:

> "Furthermore, the section is but declatory of a most elementary rule of daily application in the trial of cases."

Why the section was adopted in 1917 cannot be better or more convincingly stated than by the language of Mr. Justice Shenk of the Supreme Court, quoted from *Smellie v. S. P. Co.,* 212 Cal. 540, as follows:

> "Prior to its enactment, a party might call an adverse party as a witness if he desired to do so, but he was obliged to call him as his own witness, and he was bound by his testimony in the same manner and to the same extent as he was by other witnesses called by him. This rule often worked a hardship on litigants, and often prevented the true facts of the case from being brought out in the evidence. It was to temper the rigor of this rule that section 2055 of the Code of Civil Procedure was enacted. It is a statute remedial in character, and as such should receive a construction by the courts which will carry into effect and accomplish the intent and purpose of the Legislature in enacting it. This intent was, as we read the section, to enable a party to an action to call an adverse party as a witness for the purpose of eliciting such facts as said witness may testify to which are favorable to the party calling him without being bound by any adverse testimony which said witness may give. Only by such construction can the full remedial purpose of said legislation be effected."

In *Ciolo v. Kenourgios,* 59 Cal. App. 690 Mr. Justice (*Pro Tem*) Anderson, thus expressed the court's views on the purpose of this section:

> "The salutary provisions of section 2055 of the Code of Civil Procedure was designed to prevent as far as possible parties to an action from perpetrating fraud and dishonesty. It strips them of former barriers used for shielding falsehood."

In *Goehring v. Rogers,* 67 Cal. App. 260, Mr. Justice Nourse thus comments on this section:

> "There is nothing new in the code section except that it provides that a party calling an adverse party as a witness shall not be bound by his testimony and that he may rebut by other evidence the testimony given under such examination."

II. Effects.

The foregoing sufficiently reveals the origin and purpose of the new section, and it might be interesting at this point to consider the effect of indulging in the privilege of calling an adverse party as a witness. At the outset it is important to recognize that, after all, the judge or jury, hearing the evidence so produced, de-

termines the effect and value thereof, notwithstanding the party calling such adverse party is said not to be bound by his testimony. As said by the Supreme Court in *Figari v. Olcese*, 184 Cal. 775:

> "This provision does not mean that such testimony may not be given its proper weight, but merely, as it declares, that the party calling such witness shall not be concluded from rebutting his testimony, or from impeaching the witness."

And again as said by Justice Nourse in *Goehring v. Rogers*, 67 Cal. App. 260:

> "It does not pretend to relieve the party so called from the effect of his testimony. The privileges of the section are limited to the calling of an adverse party, but there is nothing in the section to indicate an intention of the Legislature to limit his testimony to his own case. Thus, where one of two or more joint defendants is called under the section, his testimony, if material to the issues involved, is evidence for all purposes of the case and is binding upon him as well as upon his co-defendants."

An interesting sidelight on the effect of testimony elicited under this section is cast by the decision of the Supreme Court in the Smellie case, *supra*. Therein, relative to motion for nonsuit, the court said:

> "Our conclusion, therefore, is that the testimony of a witness called under section 2055 of the Code of Civil Procedure is not, when weighing it against a presumption, to be considered, nor is it, really, evidence of the party calling such witness, and that the evidence thus produced does not dispel a presumption contrary thereto, but in favor of the party calling such adverse witness. This testimony is, of course, evidence in the case and may be considered in determining the issues of the case upon the trial or final hearing."

SOMETIMES A BOOMERANG.

The effect upon the court or jury of testimony elicited under this section often partakes of the nature of a boomerang, from the point of view of the party so calling his adversary, when by verdict or decision it is manifest that the adversary's testimony so elicited was accepted as true and adopted.

Herein there lies a serious question of expediency or strategy or maybe phychology. Counsel for plaintiff, in presenting his client's case is charged with the obligation to present it in its most favorable light and with proof of facts in support thereof. Calling the adversary and examining him on the merits of a transaction is likely to result in the creation in the mind of the judge or jury of impressions more favorable to defendant than to his client. He thus has created an obstacle which he must surmount in order to place his client in the more favorable position. The "human equation," so-called, as related to the judge or jury, and the phychological aspect of such procedure should be carefully considered in advance of decision to call defendant as a witness for testimony affecting the vital issue between the parties.

USE INCREASING.

For some years after Section 2055 was enacted the then practitioners at the bar used it but little, and then only when it appeared necessary to establish some material fact within the adversary's peculiar knowledge, or to cut corners on proving title, ownership and such like. However, as the new and succeeding generation of lawyers followed at the bar, the use of this section increased in large measure. A glance down the columns in Sheppard's Citations under Section 2055 will reveal that of late the practice of calling the adversary under 2055 has increased rapidly.

It is said by some, in justification of such early calling of the defendant, that by so doing, the adversary is "put on record," and will find himself embarrassed should he desire to testify in defense so as to meet and overcome plaintiff's case. This same result, if there is merit in it, may readily be obtained before trial by taking the adversary's deposition. If such has been done, there is then no pressing reason to call him at all under this section at the trial, as his deposition is always admissible, and any change of testimony will be readily observed and noted by comparison. Most of the old practitioners content themselves with taking the deposition of the adversary early after commencement of the action, and thus fortified, go into trial with their proofs ready to establish their case, relying on the deposition to furnish admissions or proofs for evidence in their own case, or for impeachment on the pre-

sentation of the adversary's case, should there appear a change in testimony.

III. Operation and Use.

Upon calling as a witness one of the parties described in Section 2055, and by appropriate questions and answers establishing the fact that the witness is one of such parties, the privileges and benefits and immunities of Section 2055 automatically accrue. Hence, it is not necessary to announce that the witness is being called under Section 2055, in order to secure the benefits of the section. This has been definitely determined in the cases of *Weir v. N. Y. Life Ins. Co.*, 91 Cal. App. 222, and *Worthington v. Peoples State Bank*, 160 Cal. App. 238.

IV. Manner of Examining.

It should be borne in mind that Section 2055 is the final section of the Article on "general rules of examination" in the Code of Civil Procedure. Section 2045 thereof provides that the examination of a witness by the party producing him is the "direct examination." Section 2048 provides that the opposite party may cross-examine the witness as to any facts stated in his direct examination or connected therewith, and in so doing may put leading questions. As Section 2046 prohibits the use of leading questions on direct examination, the Legislature, in framing Section 2055, provided therein that the party calling his adversary might examine him "as under cross-examination." This produced the simple effect of permitting the use of leading questions, otherwise prohibited on "direct examination." Then the section further provided that the adversary's counsel might examine him as to any matter on which he had been examined by the party calling him.

It would seem to follow from this, in the light of Section 2048, that this latter examination is in the nature of cross-examination which would in turn permit of the use of leading questions. While no case has been found in the appellate reports deciding this particular point, there are cases which hold that other parties to the action have the right to cross-examine a party witness called under this section. Thus in *Goehring v. Rogers*, 67 Cal. App. 260, the Supreme Court, in denying a hearing by that court, held that where one of several co-defendants had been called and examined by the plaintiff, each co-defendant had the right to cross-examine him.

CODEFENDANTS MAY EXAMINE.

In *Gates v. Pendleton*, 71 Cal. App. 752, on appeal it was contended that the court erred in permitting counsel for a co-defendant to cross-examine the other defendant when called by plaintiff under this section. The Appellate Court cited Section 1846 of the Code of Civil Procedure, in which it is provided that "a witness . . . can be heard only in the presence and subject to the examination of all parties, if they choose to attend and examine," and considering the two sections together, decided the contention of appellant was untenable.

It is of interest to note also that in *Dohrman v. J. B. Roof, Inc.*, 108 Cal. App. 456, the Appellate Court decided that plaintiff had the right to call an unserved and non-appearing party named as a defendant and examine him under Section 2055.

What appellation should be given to the examination by the party calling a witness under this section, and to the further examination by counsel for such witness has been a subject of discussion and debate among attorneys and also among the judges. It may be helpful to call attention to the following cases, wherein the Appellate Courts in the several written opinions, characterized the examination by the party calling the witness as "direct," and that of counsel for such witness as "cross-examination." *Western Brick Co. v. Smith*, 94 Cal. App. 370; *Petroleum Equipment Co. v. Horwitz*, 118 Cal. App. 383; *Spadoni v. Maggenti*, 121 Cal. App. 147; *Smellie v. S. P. Co.*, 72 C. A. D. 192; *Bitsekas v. Parechanian*, 67 Cal. App. 148.

In conclusion, the following case is cited as a suggestion of what trial courts may be called upon to do, should the early calling of the adverse party by plaintiff appear to be out of orderly procedure.

> "On this appeal the appellant assigns as error the action of the trial court in denying her the privilege of calling the defendant Rogers as a witness under Section 2055 until she had exhausted her own witnesses; but, as she assented to the procedure, there is nothing involved but the well-settled rule that the order of proof is to be regulated in the sound discretion of the court. (C. C. P. 2042)."
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> (*Graham v. Consolidated M. T. Co.*, 112 Cal. App. 648.)

"Why Bar Associations ?"

NO BETTER or more appropriate subject for an editorial could be selected at this particular time than the above question. An intensive campaign is being carried on by the American Bar Association to co-ordinate the activities of all bar associations, and to promote local organization. Co-operation is due from every lawyer.

"Why Bar Associations" is discussed in the latest edition of the *Bar Bulletin* of the Boston Bar Association with such convincing logic that it is worth repeating here.

"It is felt by some," says the *Bar Bulletin*, "that membership in a bar association does not result in any tangible return. It is probably true that membership does not put cash into the pockets of a member. No one, however, can measure the indirect benefits. What would happen to the lawyer if there were no organization devoted to solving his problems; no organization to protect him against lowering the standards of admission, against unethical and corrupt practices; no organization to represent him at the bar of public opinion? Is it too strong to say that destruction of the legal profession might be the result? Even as it is, the lawyer, in our opinion, is paying a heavy penalty because of the unwillingness of so many of the profession to allay themselves with any bar association. The public demands of bar associations more than they can give, because our organizations are not supported by a majority of the bar.

"Whether as a result of the depression or of some other cause, it is a fact that bar associations from coast to coast have recently taken on new life. The bar undoubtedly senses danger to its existence, and is striving to protect itself from perils arising on every side."

Report of Nominating Committee

The Nominating Committee selected at the November meeting of the Association, nominated the following:

For President: W. H. Anderson.

For Senior Vice-President: Joe Crider, Jr.

For Junior Vice-President: E. D. Lyman.

For Trustees from Members of Los Angeles Bar Association: Frank Belcher, Arnold Praeger, Jack Hardy, J. Karl Lobdell.

For Trustees from Members of Affiliated Bar Associations: Herbert L. Hahn (Pasadena Bar Association); Ernest E. Noon (Beverly Hills Bar Association).

The Nominating Committee selected at the November meeting, and whose report appears above, was composed of the following association members: Kenneth Chantry, Jerold E. Weil, Wm. Howard Nicholas, George M. Breslin, Hon. Wm. Hazlett, Birney Donnell, Irving M. Walker, Byron C. Hanna, Kenyon F. Lee, Allan G. Ritter, Allen W. Ashburn, Leonard B. Slosson, Hubert T. Morrow, Julius V. Patrosso, John Beardsley.

THE BULLETIN GETS SPECIAL MENTION

In the "Bar Editors' Digest," a service now being sent out by the American Bar Association to all local bar publications, giving brief summaries of outstanding articles in October issues, THE BULLETIN'S article by Doctor Clifford A. Wright on "Medical Testimony and Insanity" is given special mention.

The law the lawyers know about
Is property and land;
But why the leaves are on the trees,
And why the waves disturb the seas,
Why honey is the food of bees,
Why horses have such tender knees,
Why winter comes when rivers freeze
Why Faith is more than what one sees
And Hope survives the worst disease,
And Charity is more than these,
They do not understand.

(Author unknown.)

Deficiency Judgements on Mortgage Forclosures

Obligations of Contracts Not Impaired by Amendment to Section 726, C. C. P.

[Editor's Note. Judge Emmet H. Wilson, of the Superior Court, recently rendered a written opinion involving the above subject which was published in the legal newspapers at the time. At the suggestion of a number of attorneys it is reprinted here substantially in full, for permanency of reference.]

The opinion says:

"This action was brought to foreclose a real property mortgage which was executed in June, 1926. The defendants answered and have made a motion for the appointment of a state inheritance tax appraiser to appraise the mortgaged property pursuant to Section 726 of the Code of Civil Procedure, as amended in 1933.

"The said amendment provides that in an action for the foreclosure of a mortgage, upon the application of either party, the court shall appoint one of the inheritance tax appraisers provided for by law to appraise the property as of the time of sale, that the appraiser shall file his appraisal with the clerk, and that thereupon the court may render a money judgment against the defendants personally liable for the debt 'for not more than the amount by which the entire amount of the indebtedness due at the time of sale exceeded the fair market value of the real property'; provided, that in no event shall the amount of the judgment exceed the difference between the amount for which the property was sold and the entire amount of the indebtedness secured by the mortgage.

QUESTION INVOLVED.

"The question immediately presented is whether the amendment limiting the amount of the personal judgment that may be rendered merely affects the remedy as to mortgages antedating the effective date of the statute, or whether the same impairs the obligation of contracts in violation of Section 10 of Article I of the Constitution of the United States and of Section 16 of Article I of the Constitution of the State of California.

"The obligation of a contract originates in and is therefore coeval with the contract itself. A contract is brought into being by the parties themselves. A legal remedy is the means or method by which one may recover his rights or redress his wrongs, —that is, the means or method of enforcing the obligation of the contract. The remedy is a creature of legislation. The legislature may create the remedy, and it may suspend, modify, or change the same, provided always that no suspension, modification or change will be effective if the former remedy has become a part of the contract, or if the parties have expressly contracted as to the remedy. This power to suspend or to modify does not authorize the enactment of a law which will suspend the remedy for such a period of time as will amount to a denial of the same, or which will so modify the existing remedy as to revoke or remove the same.

"The law in force at the time a contract is made becomes a part of the contract, and the remedy subsisting at that time becomes a part of its obligation. In the instant case, the remedy for nonpayment existing at the time the mortgage was executed was foreclosure, and the law then contained no provision for the appraisal of the property before sale, and there was no statutory limitation upon the amount for which the property should be sold. Therefore it was the mortgagee's privilege to have the property sold at public auction to the highest bidder, without previous appraisal, and he was entitled to a deficiency judgment against the mortgagor for the amount of the judgment that remained unsatisfied by the foreclosure sale.

FEDERAL COURT CASES.

"The leading case upon this subject, and one directly in point here, is *Bronson v. Kinzie*, (1843), 42 U. S. (1 How.), 311 11 L. Ed. 143. Subsequently to the execution of the mortgage there in question a statute was passed which required that appraisers be appointed before a sale should take place and prohibited the sale of the property for less than two-thirds of the amount of the appraisement. The court held that the obligations of the con-

tract depended upon the laws as they stood at the time the mortgage was executed; that such laws entered into and became a part of the contract; that while a remedy upon contracts might be changed, yet if such remedy impaired the obligation of a contract, it was immaterial whether the change was made by acting upon the remedy or directly upon the contract itself, because, in either event, it was prohibited by the Constitution. The court further held that the statute fixing a minimum price for which the property might be sold gave an equitable estate in the premises which did not exist under the original contract, and that these new interests were directly and materially in conflict with those which the mortgagee acquired when the mortgage was made. Because of the impairment of the obligation of the contract, the statute was held void as to mortgages executed prior to the enactment of the statute.

"In the case of *McCracken v. Hayward*, (1844), 43 U. S. (2 How.) 608, 11 L. Ed. 397, the court again considered the same question, and again declared that a law passed subsequently to the execution of a contract which imposed a condition that the property involved should be appraised and should not be sold for less than two-thirds of the appraised value affected the obligation of the contract, and was void.

* * * * * * * * *

"The same question was again before the Supreme Court in *Gantly v. Ewing*, (1845), 44 U. S. (3 How.) 707, 11 L. Ed. 794. Intermediate the issuance of an execution upon a decree of foreclosure and the sale of the property by the sheriff, a statute became effective which provided that no property should be sold on execution for less than one-half of the cash value at the time of the sale, such value to be ascertained by appraisers appointed by the sheriff. Declaring that the contract of mortgage was a vested interest and that its main incident was the right to have the land applied in discharge of the debt, either by an execution or in some form of remedy substantially equal, the court held that the new remedy, requiring the mortgaged premises to be valued and directing that the sale be for at least one-half of that value, changed the contract, and that if the legislature could make this alteration in the contract, it could make others which would entirely defeat the obligation under the disguise of regulating the remedy. The court followed *Bronson v. Kinzie, supra*, and held that the sheriff's deed was valid although no valuation of the property was made before the sale.

STATE COURT CASES.

"Similar statutes have been declared unconstitutional by state courts. (*Taylor v. Stearns*, (1868), 59 Va. (18 Gratt.) 244; *Swinburne v. Mills*, (1897), 17 Wash. 611; *Strand v. Griffith*, (1911), 63 Wash. 334; *Detroit Trust Co. v. Stormfeltz-Lovely Co.*, (1932), 257 Mich. 655.)

"Examples of laws impairing obligations under the cloak of changing the remedy might be multiplied. A California statute extending the period of redemption from execution or foreclosure sale from six months to one year was held void as to any mortgage executed prior to the effective date of the statute, on the ground that the obligation of contract was impaired. (*Welsh v. Cross*, (1905), 146 Cal. 621; *Haynes v. Tredway*, (1901), 133 Cal. 400; *Summers v. Hammell*, (1911), 17 Cal. App. 493; *Savings Bank v. Barrett*, (1899), 126 Cal. 413; *Tuohy v. Moore*, (1901), 133 Cal. 516; *Benson v. Bunting*, (1900), 127 Cal. 532; *Malone v. Roy*, (1901), 134 Cal. 344.) A provision in the Constitution of North Carolina exempting certain property from sale under execution was held to be invalid as to contracts made before the adoption of the Constitution. (*Edwards v. Kearzey*, (1878), 96 U. S. 595, 24 L. Ed. 793.) A law allowing redemption from sale, when redemption was not permitted by law when the contract was made, was held void as to such contract. (*Howard v. Bugbee*, (1861), 65 U. S. (24 How.) 461, 16 L. Ed. 753; *Barnitz v. Beverly*, (1896), 163 U. S. 118, 41 L. Ed. 93.) Statutes requiring a stay of execution have been held to be inapplicable to judgments rendered upon contracts which were made before the statutes were adopted. (*Jones v. Crittenden*, (N. Car. Sup. Ct., 1814), 1 Car. Law Repos. 385, 6 Am. Dec. 531; *Townsend v. Townsend*, (1821), 7 Tenn. (Peck) 1, 14 Am. Dec. 722; *Hermitage Loan Co. v. Daykin*, (1933), 165 Tenn. 503, 56 S. W. (2nd) 164; *Stevens v. Andrews*, (1861), 31 Mo. 205; *Burt v. Williams*, (1862), 24 Ark. 91; *Hudspeth v. Davis*, (1867), 41 Ala. 389; *Luter v. Hunter*, (Texas Sup. Ct., 1868), 30 Tex. 689, 98 Am. Dec. 494.) It is clear from these examples that any law purporting to alter the remedy is void if it deprives either party to the

contract of a right which subsisted at the execution of the contract.

MUST BE A REMEDY.

"The obligation of a contract would be nugatory if the parties were without remedy to enforce it. If the remedy were taken away, the obligation would be destroyed. If the remedy were obstructed to any extent, the obligation would be impaired *pro tanto*. The court will not measure the degree of impairment. The remedy is an incident to the contract, and if the law is so changed that the means of legally enforcing the performance of the contract are materially impaired, the obligation of the contract is impaired. Legislation that lessens the extent or efficacy of the remedy upon existing contracts is forbidden by the Constitution. The Legislature has no greater power to alter a contract without the consent of the parties than has one contracting party to modify his liability without the consent of the other party.

"The law in force at the date of the execution of the mortgage now under foreclosure permitted the sale of the property at public auction without appraisement, and without condition or reservation of any character. That law became a part of the contract and was not changed by subsequent legislation. The applicability of the statute to mortgages executed after it became effective is not before the court.

* * * * * * * * * *

"The appointment of an appraiser in this action and the filing of his report would be futile unless the court were required to render judgment in accord with the provisions of the amendment under discussion, that is, for an amount not exceeding the difference between the amount of the indebtedness and the fair market value of the property. The court will not perform an idle act, and inasmuch as the statute is void in its requirement as to the amount of the judgment that may be entered upon forclosure of any mortgage executed prior to the effective date of the amendment, an appraiser will not be appointed for the purpose of making a report that will be without legal value.

"The motion for the appointment of an appraiser is denied."

Some Personal Observations on Law and Lawyers

THE LAW NOT A BRIDGE GAME.

I SAW A STATEMENT a short time ago that "the law is a practical science, not a game or a contest of wits." I wish we all knew that. Some of us are too prone to play the rules of the game, rather than the game itself. Some of us forget that we are officers of court, sworn to assist in the administration of justice. We too often seem to think that we are called upon to trip up the other fellow before we ever get to the consideration of justice.

THE HIGHER THE COURT THE GREATER THE RESPECT.

I have tried cases before courts that have treated lawyers and litigants like dogs. But such attitude is merely the mark of the court's inferiority. The higher the court, the higher the ideals and capabilities of the judge, the higher is the respect shown litigants and lawyers.

I saw this illustrated in the Supreme Court of the United States. I mentioned Chief Justice White a while back. That is what makes me think of it now. He was presiding. A nolder lawyer, from New York, with a booming bass voice, was pitted against a much younger opponent. The older lawyer wore a long coat and made what sounded to me a splendid argument. I was waiting to have my case called. I could not help wishing that I had the entree that this older lawyer seemed to have.

Pretty soon it came the younger lawyer's turn. He wore no long coat. He had no booming bass voice. And he got off to a terrible start.

He couldn't get his facts across. He hesitated and repeated and just floundered around generally. His case was lost. I was sure of it.

But old Chief Justice White leaned forward in his chair, and said to the young man: "Sir, isn't this your case"? And then the Chief Justice stated that young man's case in three or four well chosen sentences.

The young man's face lit up, as he replied affirmatively that that was his case exactly, and then went on and made a brilliant argument.

I noticed later, that when the advance opinions came out, the young lawyer won, even if he didn't have a long coat on.

To rescue that young man was one of the kindest things I ever saw a judge do.

A LONG-TAIL COAT.

Tradition has it that one should wear a long coat in presenting a case to the Supreme Court of the United States. But like most traditions, it isn't followed.

They still tell this story about Judson Harmon, a celebrated Eastern lawyer, the one-time Governor of one of our Eastern states. He didn't have a long coat, but he did have a case in the Supreme Court of the United States, which he lost. In reporting to his client, he said he had heard that he lost the case because when he argued it, he didn't wear a long coat. Then he added that he didn't know whether that was the reason or not, but that he did know that it was a damn sight better reason than the one the court gave.

ONE OF THE SOLID THINGS of the day is that men think more of the rights secured by the natural law than they do of rights secured by the positive law. They recognize that morals are the basis upon which natural law is established and enforced. A young man coming out of college today, competing for position and honor, requires a better education and should be a finer example of the purposes of a college than ever before. All this promises a better professional competition for the age in which we live. The old lawyers as well as the young, to be successful today, must bear in mind that the practice has changed but the opportunities are measureless for integrity and effort. As natural as day follows night, come the rewards of honor.—(Hon. Martin T. Manton, Judge of the Circuit Court for Second Circuit, before the American Bar.)

Junior Barristers and the Jinx

By George Keefer

AS NERVOUS as a young lawyer about to address his first jury, the Junior Barristers are preparing to make their first public appearance before the august assemblage of the Los Angeles Bar Association. At the Christmas Jinx to be held on Saturday night, December 16th, in the Sala de Oro, Biltmore Hotel, the latter organization will have its first opportunity of learning what a Junior Barrister looks like. Six talented, young attorneys, supported by their winsome and capable secretaries, will take part in the evening's diversion costumed as the Floradora Sextette. This act is confidently expected to have the greater part of the audience either rolling in the aisles or up their sleeves.

Upon the success of these intrepid thespians hangs the fate of the attendance at the January meeting of the L. A. Bar, for it is boldly announced that that conclave will be entirely sponsored and directed by the Junior Barristers. The reliable Phil Davis, in charge of program, promises an evening's entertainment for the third Thursday in 1934 which will be wholly in accord with N. R. A.—New, Refreshing, and Adequate.

The papers submitted in the Legal Article Competition are now in the hands of the judges and Chairman Wm. H. Nicholas is hopeful of being ready to announce the names of the winners at an early date,—possibly at the meeting, depending upon the ability of Judge Frank Finlayson, Prof. Robert Kingsley, and Oscar Lawler, Esq., to make head and/or tail to the manuscripts.

President Jack Hardy, a nominee, by the way, for the office of trustee for the Bar Association, has appointed Thomas Cunningham to head a committee for the enlightenment of the public with regard to Amendment 98 at the forthcoming election. This measure concerns the proposed method of selecting judges, and, if approved by the Bar, will receive publicity and explanation by the above mentioned group of speakers.

In addition to the co-ordination work of brothers Cooper and Mullins with the Law School bar associations, a long letter of inquiry has been received from officials of the Ohio State Bar requesting information about the purposes, organization, and success of the Los Angeles Junior Barristers. This is added proof that folks as far East as Ohio have not heard of that disastrously

Who Said Oratory Is Dead?

As an example of what some southern lawyers can still do as word painters, the following excerpt from the address of Mr. R. M. Kelley, president of the Warren County Bar Association, in welcoming the Mississippi State Bar at Vicksburg is commended:

"Now, what of the ladies? When God created the Southern woman, He summoned his angel messengers and He commanded them to go through all the star-strewn vicissitudes of space and gather all there was of beauty, of brightness and sweetness, of enchantment and glamour, and when they returned and laid the golden harvest at His feet, He began in their wondering presence the work of fashioning the Southern girl. He wrought with the gold and bleam of the stars, with the changing colors of the rainbow's hues and the pallid silver of the moon. He wrought with the crimson that swooned in the rose's ruby heart, and the snow that gleams on the lily's petal, then glancing down deep into His own bosom He took of the love that gleamed there like pearls beneath the sun-kissed waves of a summer sea, and thrilling this love into the form He had fashioned, all heaven veiled its face, for, Lo, He had wrought the Southern girl."

The Bar Unites On a National Program

By Silas H. Strawn, Former President of the American Bar Association

OBEDIENT to the mandate of its Constitution, the American Bar Association persistently, during the fifty-five years of its existence, has endeavored "to advance the science of jurisprudence, promote the administration of justice and the uniformity of legislation and of judicial decision throughout the Nation, uphold the honor of the profession of the law and encourage cordial intercourse among the members of the American Bar."

The beneficial influence of the Association not only upon the activities named in the Constitution but upon our governments, national and local, and upon society generally is inestimable.

Able and constructive reports of the several sections and committees, submitted to and discussed by the members at the annual meetings, have been of great value to the profession. The meetings themselves have afforded opportunities for enlarging acquaintanceship and establishing cordial and friendly relations among the members of the Association.

COORDINATION OF BAR ACTIVITIES.

Although the membership now numbers more than 28,000, that is but a small part of the total number of practicing lawyers in the United States. For several years those who have been most deeply interested in promoting the influence of the bar upon the administration of justice have realized that the American Bar Association was not rendering its greatest service until it endeavored to coordinate the activities of the several state and local bar associations and, through those organizations, to implement in the several states the many suggestions and plans for the advancement of the science of jurisprudence and the promotion of the administration of justice.

On several occasions the presidents and other prominent officials of the Association have made suggestions to that end. In 1930 a Committee on the Coordination of the Bar was appointed, which committee reported to the annual meeting of the Association in Grand Rapids in August last. That report and discussions by the Executive Committee resulted in an amendment to Article 1 of the Constitution, adding to the objects of the Association as above quoted the purpose "to express and advocate its views on such questions of public interest or pertaining to the general welfare as it shall deem proper."

The Grand Rapids meeting also adopted a National Bar Program for the purpose of better serving the public interest by co-ordinating the efforts of the several state and local bar associations under the leadership of the American Bar Association.

The necessity for United action and coordinated effort by the profession was summarized at the meeting as follows:

1. Increasing competition by other agencies in various branches of legal work, such as: collections, estates and administration, real property and titles, and taxation.

2. Lack of preparedness to meet a multiplicity of new problems requiring legal as well as administrative adjustment under a changing philosophy of government.

3. The failure of public confidence in the profession's ability to master problems peculiarly its own, such as: proper standards of admission, legal ethics, and delay in the administration of justice.

4. The failure of the Associations to secure the enactment of socially beneficial legislation and to combat harmful legislation, and the charge that they are not representative, and speak for a section of the bar, rather than for the whole bar.

5. The lack of working contacts between the Associations, entailing financial waste and lost energy.

FOUR PRINCIPAL SUBJECTS.

As stated by President Evans, it was decided that efforts for the coming year be concentrated upon four principal subjects. It is unnecessary to mention the importance of these subjects because, at this time, they compel the serious consideration of every lawyer.

The subject of *Criminal Law and Its Enforcement* would seem to be uppermost in the minds of not only of the members of the bar but of the public generally. Without entering into a discussion of the causes which have led to the increase in crimes, it is obvious that during the past decade crime has greatly increased and in some cases at least, particularly with respect to the punishment of kidnaping, the machinery of the states has proven so

adequate or inefficient as to compel federal intervention.

As to *Legal Education and Admissions to the Bar*, great strides have been made in bringing about throughout the several states the implementing of the A. B. A. rule adopted at the Cincinnati annual meeting in 1921. Yet, notwithstanding the splendid efforts of the Section on Legal Education and Admissions to the Bar and its efficient Advisers in that behalf, much work yet remains to be done to impress upon the state and local associations not only the desirability but the necessity of adopting the A. B. A. rule.

If this rule were adopted and higher standards for admissions were compulsory, I predict that there would be less necessity for giving so much attention to the third subject for consideration mentioned by President Evans, that is, the *Unauthorized Practice of the Law*. It seems quite certain that the adoption of the A. B. A. rule in the several states would awaken the members of the bar to the necessity of preserving the practice of the law as a profession and not a trade or a "racket" and that every lawyer would make it his duty to discourage, if not to prevent the practice of the law by individuals or corporations not lawfully authorized to do so.

The *Selection of Judges* always has been a subject of the most serious consideration not only to the members of the bar but to the public, which is vitally interested in the administration of justice. Many plans have been discussed. It is expected that the co-ordinated efforts of the several states may be helpful in bringing about a more uniform system.

PROGRESS AND ENTERPRISE.

Those who have given the subject serious thought concur in the judgment of the Executive Committee that it is better for the coming year to focus attention upon the four subjects mentioned rather than to scatter over a wider field.

I submit that the action of the Association at the last meeting is a further evidence of its progress and enterprise in more efficiently rendering the public service indicated by its Constitution.

May we indulge the hope that every bar association, state and local, will welcome the plan and assiduously collaborate in making it effective?

Too Many Doctors! How About Lawyers?

The Council on Medical Education is actively persuading medical schools to limit their enrolment to stop over-production of U. S. doctors. The nation has 25,000 too many doctors already, estimates the American Medical Association, and 6,000 new students entered medical schools last year. Doctors educated abroad hereafter will find getting a license to practice in the U. S. exceedingly difficult.—(*Times.*)

THE LAWYER'S DILEMMA

The rule forbidding lawyers to solicit business by circular, advertisements or personal interviews, contained in the canons of ethics of all bar associations, and enforced by the courts, is of such axiomatic character in legal eyes that it may seem a waste of time to subject it to scrutiny. Nevertheless, as it is well at times to examine the workings of any rule, it is now our purpose to consider this time-honored precept in the light of modern conditions.

It is obvious that there is much anxiety among the bar regarding the future. This unrest is manifested in a number of ways; in the attempts being made almost everywhere to curb unlawful practice of the law, and to limit the activities of corporate fiduciaries; in investigations of pernicious activities of some lawyers, sometimes by bar associations, at other times by order of the court, as in New York and Massachusetts.

Another manifestation of doubt concerning the strict limitations lawyers have placed upon themselves is shown by the fact that the bar has taken to the air. As long ago as April, 1930, the *Bulletin* mentioned that the Hampden County Bar Association had voted to start collective advertising. Today, state bar associations, notably Wisconsin, use the radio to inform the public about legal matters. The seal of approval of collective advertising, of making the public bar-conscious, seems to have been set by the American Bar Association last winter when it not only inaugurated, but took infinite trouble to advertise extensively, a series of nation-wide broadcasts by the leaders of the profession, men of impeccable standing. (From *The Bulletin* of the Boston Bar Association.)

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